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THE BASE REALIGNMENT AND CLOSURE PROCESS: IS IT POSSIBLE TO MAKE RATIONAL POLICY?

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The Base Realignment and Closure process (BRAC) has been widely praised as an ingenious solution to an impossible problem. Ending a decade-long legislative impasse in which Congress had prohibited any major military base shutdowns, the five BRAC rounds since 1988 have closed over 100 major bases and hundreds of smaller facilities, saving billions of dollars and freeing up resources for higher priority programs.[1] Legislators created a process that stripped them of their power to protect local interests, delegating what amounted to final authority to an independent panel that would decide which bases to close. The process, while not perfect, emphasized efficiency and rationality, over the logrolling and transparent self-preservation that had produced a grossly bloated and unsustainable base infrastructure.

The unique feature of the BRAC process was the extraordinary amount of power that legislators delegated. In the 2nd through 5th rounds the military services recommended specific bases for closure or realignment, based on a detailed set of criteria.[2] An independent commission – BRAC itself – then performed its own analysis of the recommendations, with the discretion to add or delete bases from the list. When the commission had completed its

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[1] The Government Accountability Office (2005, 11) estimates that the first four rounds had saved DoD $29 billion through fiscal 2003, with annual savings of as much as $7 billion since then.

[2] In the first round, the commission was the starting point, beginning deliberations without any initial recommendations from the military services.

deliberations, it forwarded a final list of closures and realignments to the President, who had to either accept or reject it without making any changes. If the president approved the list, Congress then had a final opportunity to reject it, again without amendment. But unless both chambers passed a Joint Resolution to overturn the recommendations, they would go into effect. In practice, this meant that the Commission's decisions could not be stopped.

In its automatic implementation and lack of ongoing oversight, the BRAC process extended well beyond any other kind of congressional delegation. BRAC is often compared to the fast-track trade authority, in which Congress delegates to the president the authority to negotiate trade agreements. But even Fast-Track requires close congressional involvement in every phase of trade negotiations, requires affirmative congressional action to ratify an agreement, and as a congressional rule rather than a law can be revoked by a one-house majority (Hornbeck and Cooper 2007).[3] Even regulatory agencies, which make rules that go into effect without further congressional action, are constrained by firm procedural rules, face continuous monitoring through the oversight and appropriations processes, and are subject to judicial review.

With base closings, however, nearly all of the procedural checks on delegated power – the Administrative Procedures Act, ongoing congressional oversight, appropriations power, judicial review –are absent. While *ex ante* procedural controls existed, there were no "institutions or procedures that check agency actions on a regular basis" (Epstein and O'Halloran 1999, 25).[4] Miller (2005, 223) argues that "from the standpoint of conventional [principal-agent theory], this is an anomaly. Congress is not supposed to create agencies with the purpose of defying the dearest reelection aspiration of its members." And yet it did, because of universal agreement about the need to close bases and the relative clarity of the distributional choices.

BRAC raises two questions about legislative delegation. The first is why legislators chose to delegate so much authority in the first place. The generally

[3] Another possible analogue is the U.S. Sentencing Commission, which Congress created in 1984 to set mandatory sentencing guidelines for federal criminal violations. Congress thereby delegated to the Commission the authority to determine the length of prison sentences, which bound federal judges. But even here, Congress itself determined the maximum and minimum sentences in criminal statutes; moreover, prior to the Commission, the authority to determine sentences within the statutory ranges was entirely in the hands of individual federal judges and the federal parole agency. See *Mistretta v. United States*, 488 U.S. 361 (1988). Moreover, the Supreme Court in 2005 held that the guidelines had to be advisory, not mandatory, *Booker v. United States*, 543 U.S. 220 (2005)

[4] Apart from the automatic implementation of the BRAC recommendations, the lack of judicial review is the most unusual aspect of the process. Nearly every regulatory action can be challenged in the courts, with judges serving as a final check on agency action. In *Dalton v. Specter* 511 U.S. 462 (1993), Senator Arlen Specter (R-PA) challenged the 1990 BRAC decision to close the Philadelphia Naval Shipyard. In a strongly worded decision, the Supreme Court held that neither the Secretary of Defense's decision to recommend closures, nor the president's approval of the list, were reviewable. The lack of review was explicitly a result of how Congress had written the statute. The practical consequence of this decision is that "courts would likely allow the BRAC process to proceed, even if the Department of Defense, the Commission, or the President did not comply with the [Act's] requirements" (Watson 2005, *i*).

accepted answer – which I will discuss below – is that the process resolved a collective action problem that legislators *wanted* to resolve. Despite unanimous agreement about the need to close bases, legislators lacked the ability to make specific choices themselves, and were further unwilling to allow the Defense Department to close bases on its own In formal terms, the policy space was one-dimensional, and the only decision required was selecting which military bases had to be closed. Because of the consensus about what, precisely, was necessary to solve the problem, it was possible to delegate a narrow scope of authority to the BRAC Commission along with strong procedural rights (that is, the power to have its recommendations go into effect, more or less, automatically) The structure of the process insulated members from the political consequences of base closures, and offered opportunities for credit claiming and position taking (Mayhew 1974).

Still, by the 1995 round the process was not nearly as one dimensional as it was in the early rounds, and in 2005 the decision making space expanded even more. Increasingly, BRAC became entangled with broader issues of defense planning and policy, including privatization, force structure, joint service activities, and overall defense strategy. In the 2005 round, the process blurred into a comprehensive review of defense strategy, in which Secretary of Defense Rumsfeld used base closures to advance his overall goal of military transformation. The incremental expansion of the "decision space" challenges the traditional explanation that Congress is truly reluctant to delegate broad discretionary authority.

The second question is whether the BRAC model can succeed in other policy areas, where Congress has been similarly unable to act. The success of the BRAC process has spurred many efforts to replicate it on other controversial issues. In 1999, I argued that independent commissions have a poor record; there have been very few instances where they have actually resolved legislative impasses (Mayer 1999).[5] The problem is that legislators are usually reluctant to delegate substantial policy authority, at least without strong procedural safeguards and ongoing monitoring. The conditions that made BRAC successful were the consensus on the goals, agreement about what precise policy steps were necessary, and the narrow range (at least initially) of the policy making authority. These conditions are rarely present, and clearly do not apply to, say, efforts to create BRAC-like commissions on entitlement reform, where there is intense controversy over both goals and specific policies.

The "conventional wisdom" about the BRAC process is thus incomplete. On the one hand, the process successfully ended a longstanding impasse, and forced efficiencies by emphasizing general welfare over particularized benefits. But the standard explanation of why Congress willingly delegated so much authority – the narrow decision space, and the neutrality of the process – apply mostly to the early rounds: the later BRAC commissions exercised authority over

[5] The high-water mark for independent commissions is the 1983 Greenspan Commission on Social Security Reform

a broad range of defense issues, extending far beyond the distributional question of which bases would be closed. The process also became increasingly politicized, with municipal and community groups lobbying the commission with the same strategies applied to members of Congress, and allegations of logrolling and political pressure. The increasing complexity of the decision making process, and concerns about politicization, have undoubtedly played a role in Congress' reluctance to consider further BRAC rounds.

Ultimately, the evolution of the BRAC process demonstrates that there is no such thing as a perfectly neutral or objective administrative process. Students of public administration find this point completely obvious, and the political science literature has grown thick with articles pointing out that "neutrality" is a complex concept, especially when it involves a substantive power delegated to administrators not directly accountable to the public (Moe 1989; West 2005; Epstein and O'Halloran 1999). However, even when the distributive choices are discrete, there can still be considerable controversy over the accuracy of underlying data and analytical processes; the GAO has amply documented the ambiguity of decision making procedures, including disputes about how to count environmental costs (GAO 2007a) and controversy over whether the Department of Defense adhered to the selection criteria mandated by Congress (GAO 2007b).

In the end I conclude that Congress should be wary of relying too heavily on independent commissions as a solution to policy deadlocks. In 1999, I was dubious about the wisdom of delegating substantial legislative authority to an independent body that is purposely insulated from political influence (Mayer 1999). Delegation serves crucial functions. It is the foundation of regulatory policy, and is especially important when Congress lacks the expertise, as opposed to the will, to act. But legislators should not be so eager to cede such broad authority, particularly in a process that is implemented automatically, without real review. Rationality and efficiency are important policy goals, but they is not the only ones. Representation, accountability, and legitimacy are important as well, and it is not always beneficial to maximize any one at the expense of the others.

> To create a process that skips the sometimes-bruising political decision making processes in order to achieve a definitive purpose may appeal to the American preference for action over words and symbols, but it may also contradict other American values for political accountability and balance of power (Sorenson 1998, 232).

Representative J. Randy Forbes (R-VA) made this point in his dissenting view to the House Armed Services Committee report on the 2005 Joint Resolution of Disapproval:

> I take exception to the basic premise of the Base Realignment and Closure process that allows nine non-elected officials to make

> major strategic and irrevocable decisions regarding our military infrastructure. These appointed officials should not be allowed to overturn the decisions made by our uniformed and civilian military leaders to which we entrust our national security. . . That is a role for Congress and should not be abdicated when so much is at stake. (U.S. Congress 2005, 11)

Base Closing History and the Origins of BRAC

The military base infrastructure is the iconic example of the problems of distributive politics and the collective dilemma. In a perfect Iron Triangle, members of Congress, especially those on the armed services and appropriations committees, supported and funded military bases in their states and districts. The resulting local economic benefits and jobs gave constituents a powerful incentive to organize and protect their interests, and legislators were happy to serve as their champions. And the Pentagon, for the most part, was perfectly content to go along, as long as it did not have to give up anything elsewhere in the defense budget. Because the benefits were concentrated and often huge, and the costs universally distributed, no one had much of an incentive to force efficiencies.[6]

This arrangement fell apart in the 1970s, because of a combination of an increasingly irrefutable degree of waste, military cutbacks, decentralization of power within Congress, and charges that the defense department was using closures as a political weapon (Becker 2005, 19-21). After two DOD efforts to close hundreds of bases in 1973 and 1976, legislators revolted against what they saw as an explicitly political strategy intended to punish critics of defense spending. Subsequent legislation required the department to give notice of any proposed closures, prohibited the Defense Department from even *studying* whether a base should be closed, and ultimately required all closures to adhere to the National Environmental Policy Act and its time consuming reporting and study provisions. The effect was as intended: base closures came to a complete halt.

Individually rational behavior of legislators thus produced a collective irrational result. There was universal agreement that the base infrastructure was excessive and inefficient. But no legislator would rationally volunteer her own

[6] These mutually interlocking interests did not prevent DoD from closing bases. But the closure process reflected an ongoing logroll between legislators and the military. "The simple understanding was that military officials would could close bases as long as they spared those located in districts represented on the military committees. In return, members of the military committees worked to keep off the congressional agenda proposals to allow greater congressional involvement in decisions about base closings" (Arnold 1990, 139). Twight described the congressional politics of base closings in the 1960s: "The general pattern was the DOD would announce intended base closures, legislators in affected districts would protest vehemently in congressional hearings, and DOD would close the bases it wanted to close" (1989, 75).

installations for closure. Congress was trapped in its own institutional dilemma, with no obvious way out.

By the 1980s nobody could argue – at least not with a straight face – that every military base was necessary for national defense. Some of the most outrageous examples were the Naval Academy dairy farm, which the Navy tried to close in 1965 only to provoke congress into passing legislation blocking the move; Ft. Douglas, a frontier fort that had shrunk to 1% of its original size and sat in the middle of the University of Utah campus; Ft. Sheridan, whose chief feature was one of the most picturesque golf courses in the world; and the Presidio, which 200 years ago was a strategically located garrison at the mouth of the Golden Gate, but wound up surrounded by the city of San Francisco.[7]

The conventional wisdom was that legislators, facing increasing deficits and budget rules that were about to force the question of spending cuts, were searching for a solution to the collective dilemma framed by the base structure. There was broad consensus that something had to be done, and fewer and fewer members were willing to defend the roadblocks that in practice made it impossible to close anything. The solution -- given shape by Representative Richard Armey (R-Texas) – was to separate the process into two parts: the first was the a decision to ratify the principle of base closing and establish a mechanism by which specific choices would be made. The second was the binding nature of that process, in which legislators gave up their power to amend the final list of closures. Breaking up the process into two separate decisions created substantial political cover, insulating the affected members from the consequences of a local base closing, and insuring that no legislator was directly connected to a specific vote to close a base. A few legislators criticized the proposal, with some making half-hearted defenses of old-school logrolling, others objecting to the refusal to consider closing foreign bases, and others because they foresaw that their own installations would probably be on the list.

The binding character of the recommended closures was key. Once the president had approved the commission recommendations, Congress had 45 days to reject the list by a Joint Resolution, under expedited procedures designed to minimize obstructionist tactics (Davis 2005). In practice, the process was unstoppable after this stage, since it would take 2/3 majorities in both the House and Senate to actually block the closures from going into effect (assuming that resolution of disapproval would have to overcome a presidential veto).

Resolutions of disapproval were duly introduced, but the floor debates all had the same character: members representing districts where a major closure occurred would rail against the process, insisting that the methodologies were

[7] All of these facilities are now closed. Ft. Douglas, Ft. Sheridan, and the Presidio were shut in the first round. Congress finally acceded to Navy requests to close the dairy farm, repealing the mandate to keep it open as part of the Fiscal Year 1998 Department of Defense Authorization Act, PL 105-85. See Argetsinger (1998).

flawed, that their bases made a critical contribution to national defense, that it was all about politics, that the closures disrespected military personnel, that the law was violated.[8] Members knew that their efforts were futile, but the chance to object played a crucial symbolic function, providing members with vital position taking opportunities. None of the disapproval resolutions came anywhere close to passing.

Conventional Wisdom About Legislative Delegation

Legislative delegation – the creation of external agents vested with the authority to make decisions on Congress' behalf – is a longstanding feature of American national government.[9] Despite a constitutional principle against delegation of legislative power (Fisher 1990, 226), federal courts have generally allowed broad delegations of legislative power as long as Congress articulates coherent principles as to how that power should be exercised.[10] Legislators may choose to delegate because they lack technical expertise, wish to transfer political blame, recognize that formal administrative processes may result in better policy, or because they are politically unable to make policy decisions themselves (Epstein and O'Halloran 1999; Becker 2005).

One explanation for BRAC begins with the premise that the particularized benefits from military bases created a "collective dilemma," in which members' individual incentives produce a collectively inefficient outcome. Every legislator has an individual incentive to maximize the benefits that flow to her district, even though the result is a collectively inefficient policy that no one prefers. Like the famous Tragedy of the Commons, rational individual calculus produces a collectively irrational outcome. The desire to protect local installations results in a military base structure that is too large, wastes money, diverts resources from more pressing needs, and produces less "national security" than other more efficient alternatives.

There is no obvious way out of this trap. Members believed they garnered substantial credit from defending "their" bases, and longstanding political lore held that base closures ended congressional careers as unemployed

[8] Rep. Ray LaHood (R-Illinois), who introduced the resolution of disapproval for the 2005 round, noted that "the reason I introduced this resolution is because I feel very strongly that we are in a position in the House to send a very strong message of support to those who are doing the hard work in Iraq, those who have done the hard work in Afghanistan, and those men and women who we call our citizen soldiers." Closing bases, LaHood argued, would "say to the citizen soldiers who have done the hard work, thanks, but we don't need you any longer." *Congressional Record*, October 27, 2005, H9290.

[9] A variant of delegation is when members choose to limit their discretion, binding themselves to particular rules that constrain future action. An example is the "pay as you go" budget rule, first enacted in 1990, that required all new spending or tax cuts be funded by equivalent spending reductions or tax increases elsewhere in the budget. By statute, the Director of OMB had the authority to make across the board spending cuts to enforce the rule. Both the House and Senate, in addition, have adopted internal procedural rules that apply an analogous rule to budget deliberations (Keith and Heniff 2005).

[10] Posner and Vermule insist that the nondelegation doctrine is a myth, and that the Constitution prohibits merely the assignment "to anyone else the authority to vote on federal statutes or to exercise other *de jure* powers of federal legislators" (2002, 1723).

constituents took out their frustration on an obviously ineffective representative. Self-preservation trumped everything: "When it came to protecting depots, ports, and air stations in their own districts and states," I wrote in 1999, "even the most fiscally conservative legislators would morph into champions of government spending, and even the most ardent doves would sound like General Curtis LeMay" (Mayer 1999, 35).

There are, to be sure, limits to how far legislators will push for local benefits; otherwise, we would expect pork barrel spending of all kinds to increase without limit. In this instance, nobody was willing to defend the general principal that the defense budget should fund inefficient military bases.[11] The continued existence of a bloated infrastructure hurt the institutional reputation of Congress, especially in the face of public pressure from the executive branch. The military services insisted that the unneeded bases siphoned off money that could be better used for procurement, training, maintenance, or any one of a number of higher priority functions. The important feature of the BRAC process is that it allowed members to vote for the collective principle of efficiency, *and* against a specific benefit cut if their own districts were affected, thus providing an escape from the collective dilemma (Mayer 1995).

BRAC worked. However, the fifth and likely final round demonstrated that the process had evolved from its initial foundations, to the point where it no longer had the same character as the early rounds. The Commission became embroiled in the same political controversies that spurred the BRAC process in the first place, and exercised increasingly broad authority.

Increasing Politicization
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The intent of the BRAC process was to use a "neutral" administrative process to make decisions about which facilities to close. The establishment of clear criteria, and the inability to logroll once the Commission's recommendations had been made, gave a veneer of objectivity and rationality to the process.

The first three rounds went fairly smoothly; indeed, BRAC was hailed as a path breaking innovation that solved a decades-old deadlock, and an entirely sensible way of implementing a rational policy. But during the 4th round in 1995, President Clinton finessed the Commission's decision to close two large bases in California and Texas, evading the crucial all-or-nothing character of the list of closures. The five existing Air Logistics Centers had an excess capacity of 45% (GAO 1996, 3), and the 1995 BRAC round had slated two ALCs – one at McClellan Air Force Base in Sacramento, the other at Kelly Air Force Base in San Antonio – for closure.

President Clinton could not remove the bases from the list of proposed closure; his approval was all or nothing. But the Administration announced that

[11] This is, of course, different than a legislator arguing that the base in *her* district is absolutely essential to national defense.

it would simply replace the military personnel with private contractors who would do the same work (called "privatization in place"). Most of the jobs would stay, even though the bases would be "closed."

The reaction was quick and predictable: even defenders of the BRAC process accused Clinton of manipulating it for political gain, noting that the gambit saved 20,000 jobs in states considered vital in the 1996 presidential election.[12] The controversy "led to as much anger and resentment within Congress as there had been in 1976" (Becker 2005), when legislators began putting up the roadblocks that prevented base closures for more than a decade. Despite Defense Department insistence that the infrastructure was still too large and additional closures were necessary, the House and Senate would have none of it (Department of Defense 2004, 3). The 2005 Commission noted the post 1995 experience with efforts to get new rounds authorized:

> From 1997 to 2000, the House of Representatives repeatedly rejected Administration requests to conduct two additional rounds of base closures in 2001 and 2005. In 1998, the Senate Armed Services Committee rejected an amendment to allow a single round of base closures. Congress allowed statutory authority for BRAC to expire and did not renew it until after the paradigm-shifting September 11, 2001, terrorist attacks (2005, 314).

Some of this politicization was intentional. Goren notes that after the first round, Congress "opened up" the process by requiring the military to submit an initial list of proposed closures, requiring the Commission to hold hearings and conduct site visits, allowing for public submissions, a d requiring the Commission to conduct some of its deliberations in public. The result had many of the characteristics of a political process. Local communities hired professional lobbyists and consultants to prepare their cases, members of Congress worked to keep their bases off the initial list of proposed military closures, and regional delegations tried to convince the Commission to replace their own bases with those in other areas of the country. By formally allowing the Commission – as well as the Secretary of Defense – to consider the local economic impact of a base closure, Congress permitted a broad degree of discretion In 1993, Secretary of Defense Aspin removed two bases on the initial military list (the Monterey Presidio and McClellan Air Force Base) because of adverse economic effects (Goren 2003, 99).

Goren argues that these subsequent changes – which included mandatory site visits, starting with lists of proposed closures submitted by the military services, integrated GAO audits of data, more public submissions,fewer

[12] In the end, Congress passed legislation allowing contractors to compete with the remaining ALCs for depot maintenance work. During the first round of competition, however, "a leaked memo from acting Air Force Secretary F. Whitten Peters suggested that the White House was still playing games with the 1995 BRAC round," by encouraging Lockheed Martin to bid on the contract and keep the work at Mclellan AFB (Mayer 1999, 37).

military personnel on the commission – had the effect of repoliticizing the process. "The newly opened process prompted politicians to take action. Elected officials worried that if they did not publicly take some action, their constituents would blame them if bases were closed in their districts and states. Faced with public hearings, public announcements of the bases to be closed, and a somewhat established, longer-term system, politicians could not reasonably be expected to refrain from trying to influence the base-closing process. The process itself was now regularized and institutionalized; it was no longer a 'one-time affair'." (Goren 2003, 89-90). In 1991, the city of Charleston, NC, spent $1 million hiring a D.C. law firm and comparing the costs of closing local navy bases to alternatives in Virginia or New England (Goren 2003, 92).

Sorenson (1998) argues that the commission process was highly politicized from the beginning. He cites the appointment of retired politicians and retired military officers, all of whom had their own biases; lobbying the military services to keep favored bases off the initial proposed list of closures; internal log rolling and efforts to spread closures evenly across the services; strategic behavior by the services designed to protect specific installations; and ambiguity in the data, with disputed cost-benefit analysis.

In the end, Sorenson concludes, the BRAC model succeeded, but not "without considerable political interference. It came from the services, from the Defense Department, from local officials, from key members of Congress, and from presidents" (1998, 216). The Defense Department was accused of showing favoritism to the services in its reluctance to force joint-service use of bases. The Clinton White House was accused of blatant manipulation in its controversial "Privatization in Place" plan that closed bases in name only by shifting all work to private contractors who would operate out of the same facilities. The Navy was accused of manipulating cost data to close bases according to a predetermined plan (Render 1997).

Congress has taken note of the increased politicization. In 2005, the House Armed Services Committee recommended that the 5th round "must be the final time the current BRAC model is used to make closure and realignment decisions" (U.S. Congress 2005, 8). The main objection was that the original process had morphed into one characterized by the same sorts of trade-offs, log-rolling, and self-interested behavior that legislators were trying to escape when they created the first BRAC in 1988. The HASC report cited the Defense Department's initial refusal to release the underlying data behind its recommendations; allegations that Commission decision making had become politicized and subject to lobbying; a large number of "contingent" recommendations that required other governmental units to act before a base would be closed or realigned; subordinating military necessity to community impact in making decisions; and a lack of organization. The Committee urged "a new BRAC process that is able to make measured, apolitical, and transparent decisions while restoring its credibility" (U.S. Congress 2005, 9) – in other words, to create a new BRAC process that looked like the original BRAC process.

Expanding Policy Space

In each successive round, the decision making process became more complex. The first round was the simplest, as there were many obvious candidates for closure. Subsequent rounds required more difficult decisions, and necessarily included analysis of the relationship between the base infrastructure and the composition of military forces.

In his review of the early rounds, for example, Hix criticized the Army's evaluation process on the grounds that it failed to consider a broader range of feasible options. The Army classified "each installation according to its current principal function (e.g., maneuver, training school, major training area, depot) without first considering the range of activities that each installation might reasonable house" (2001, 63). This, Hix argued, preempted full consideration of what sorts of joint missions an installation might serve. Although he notes that the DoD did create groups that considered what functions might be combined, he faults them for not "look[ing] into major initiatives, such as combining major functions of one service onto an installation of another service" (2001, 63). He proposed a broader closure process consisting of a "top-down, integrated perspective on installations as a set of assets to which necessary activities are to be assigned in the most efficient way. The process would consider all assets at all installations to be available to serve any appropriate function. It abandons the bottom-up, predetermined single-function view of past BRACs that valued installations only according to their current uses." (2001, 75)

The goals of the 2005 round, at least as promulgated by the Secretary of Defense, were far more ambitious. Rather than simply use the opportunity to make the installation infrastructure more efficient, Secretary Rumsfeld noted in his initial policy memorandum, that

> BRAC 2005 can make an even more profound contribution to transforming the Department by rationalizing our infrastructure with defense strategy. BRAC 2005 should be the means by which we reconfigure our current infrastructure into one in which operational capacity maximizes *both* warfighting capability and efficiency (Rumsfeld 2002b, 1)

Transformation, in Rumsfeld's view, required a complete reorientation of military organization, away from massive conventional warfighting capability, and towards a lighter, mobile, and technologically advanced force (Rumsfeld 2002a). Whether or not transformation is a good idea or not, there is no question that the policy was controversial and often resisted by the military services (Boot 2007). There is also no question that Rumsfeld used the BRAC process – openly – as part of his broad organizational strategy. Base closing was no longer a simple task of distributing the costs of infrastructure reduction. It was now a component of a fundamental shift in military strategy.

In particular, Rumsfeld placed great emphasis on joint or cross service activities, using the BRAC process as a way of encouraging the military to adopt multiservice missions. The GAO noted that the previous rounds "did not provide an adequate forum for resolving cross-service issues," primarily because "parochial interests and disagreements among the services over evaluations of their facilities served as barriers to achieving significant cross-service agreements in 1993 and 1995 (GAO 2005, 27). In 2005, Rumsfeld created Joint Cross Service Groups in seven areas seen as most promising for multiple service activities, and gave the groups the power to report directly to a Department-wide coordination authority.

Congress had also required the department to submit a 20-year force-structure plan as part of the base closing process, going well beyond the 6-year plans required in earlier rounds,

> based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.[13]

These force structure decisions trickled down into the BRAC process in many ways. The 2005 Commission was, for example, asked to consider base closings and realignments conditioned upon a new DoD policy of changing the way the Air National Guard units were organized. The Defense Department had proposed stripping several ANG units of their flying missions; what remained would be a surge capability that would support troops preparing to enter into an active theater (called Expeditionary Combat Support, or ECS). The Commission heard testimony and accepted submissions detailing the effect this force structure decision would have on recruitment, retention, and the ability of the ANG to support homeland security and disaster response missions.

This was only one of the many broader implications of the BRAC process. Unlike the first four rounds, it was not simply a matter of closing excess bases. It involved long-term consideration of overall military strategy and force structure:

> . . .several DoD witnesses at Commission hearings made it clear that the purpose of many 2005 BRAC recommendations was to advance the goals of transformation, improve capabilities, and enhance military value. In some cases, accomplishing these new goals meant proposing BRAC scenarios that either never paid off (i.e., resulted in a net increased cost) or had very long payback periods. The Commission's assessment of the selection criteria and

[13] 10 U.S.C. section 2912 (A)(1)(a)

> Force Structure Plan took place in the context of a balance between the goals of realizing savings and rationalizing our military infrastructure to meet the needs of future missions (BCAR 2005, 3).

Other decisions were conditioned on state and local governments making changes to zoning in order to prevent encroachment on base activities, and use eminent domain to purchase properties in an accident zones where crashes, if they happened, were especially like to occur (Naval Air Station, Oceana, VA; Report, 108).[14] In the House Armed Services Committee report on the disapproval resolution (H.J. Res 65), Representatives Joel Hefley (R-CO) and Solomon Ortiz (D-TX) criticized the "unprecedented number of 'contingent' recommendations," arguing that it was not Congress intent "that the Commission attempt to broker land acquisitions, build buffer zones, or force states into negotiations to keep their bases open" (U.S. Congress 2005, 8)

At some point, an expanded and continuous BRAC process begins to look like a standing committee with extremely strong procedural rights: the ability to make binding recommendations which go into effect unless the legislature *overturns* them. While we think of the independent commission process as distinct from the broader legislative process, this functional difference begins to blur the more we rely on commissions to address intractable problems that Congress cannot solve. It simply recapitulates the perennial debate over politics vs. administration.

Delegating on Other Issues: Is the Independent Commission Model Viable?

In his review of the 1983 Commission on Social Security Reform, Light noted the limits as well as the potential of the independent commission model:

> The lessons for future commissions are clear. First, if Congress and the President do not want to solve a problem, no amount of "commissioning" will work. Commissions cannot provide supply the leadership that others lack. Second, if Congress and the President do decide to move, commissions can provide cover. They can provide the needed hiding place. Commissions will rarely be the source of final agreements. The best they can offer is a set of closed doors for the principals (Light 1995, 218).

BRAC, because of a unique confluence of events and conditions, offers a rare exception to this rule. To see the limits of the model for other purposes, I offer the following thought experiment: consider whether Congress would create a BRAC-like commission, vested with the power to make

[14] The Accident Prevention Zones consist of areas close to the runways, where plans are especially vulnerable during takeoffs, landings, and approaches. http://www.nasoceana.navy.mil/graphics/NOISE%20CONTOURS%20PAGE%201.pdf

recommendations that take effect automatically unless overturned by majority votes in both chambers, in the following policy areas:

- Immigration reform[15]
- Social Security reform[16]
- Health care reform[17]
- Balancing the federal budget[18]
- U.S. Response to Global Climate Change
- Reorganizing the Intelligence Community or the Department of Homeland Security[19]

I submit that it is impossible that Congress would do such a thing. The question, though, is why?

The chief difference between these issues and base closures is not simply the scope of material interests that might be gutted, but rather one of resolving the fundamental disagreements that gave rise to the political problem in the first place. BRAC-like Commissions cannot resolve those disagreements, or create consensus when none exists. All they can reasonably do is implement decisions that a majority of members know must be made, but that through some institutional failure they cannot make themselves using existing and internal decision making processes.

In these areas – indeed, in most complex policy areas – not only is there no consensus on what specifically must be done, there is often no consensus that *anything* should be done, and no objective way to make trade-offs among the many political, moral, scientific, budget, and philosophical issues involved.[20] As I have posed it, in fact, the question has already introduced a bias. Unlike the legislative process, in which doing nothing is an option – indeed, it is the

[15] The U.S. Commission on Immigration Reform, established in 1990 by Public Law 101-649, was established to review immigration policy and make reform recommendations.
[16] The Bipartisan Commission on Entitlement Reform (the Kerrey Commission), established in 1993, made recommendations on the full range of entitlement programs, without effect.
[17] The National Bipartisan Commission on the Future of Medicare, established in 1997, could not even come to a consensus about possible reforms, and "disbanded in disagreement, just hours before President Clinton denounced its proposed report" (Pear 1999).
[18] The budget rules in Gramm-Rudman do not count, as they were more akin to a limit on future congressional discretion rather than a delegation of policy making power to an outside agency. Under that law, first enacted in 1985, if a congressional budget failed to meet deficit targets specified in the law, discretionary spending would be automatically cut across the board by a fixed percentage sufficient to bring overall spending under the target. When subsequent budgets failed to meet the deficit limit, Congress simply changed the rules, opting to either raise the target or exempt more spending from the calculations. In effect, Congress rescinded the rules as soon as they went into effect (White and Wildavsky 1989, 516). To make the comparison apt, Congress would have to create a commission to recommend spending cuts or tax increases that would go into effect unless Congress blocked them with (ultimately) 2/3 majorities in both chambers.
[19] The 9/11 Commission made many specific recommendations about organizational reforms and policy changes, but they required legislative action to implement them.
[20] This is one reason the automatic sequestration rules in Gramm-Rudman failed. In George Will's words, it "[assigned] the same social value to Amtrak subsidies and programs for spina bifida babies" (1985, B7)

most likely result – in delegating such power to a commission Congress has already conceded the issue of *whether* something will be done. The only matter left is how the costs will be distributed. It is difficult to imagine a BRAC-like level of delegation without a consensus on what the specific policy should be. Such delegation, absent consensus, would be an abdication of congressional responsibility, enshrining efficiency as the only goal of the policy process.

And yet, the independent commission model remains seductive, and legislators continue to turn to them as a way of addressing other controversial issues, especially entitlement reform. But, as expected by delegation theory, which holds that delegation becomes less likely as the scope of the delegated authority increases, none of these proposed commissions have the sorts of procedural rights enjoyed by the BRAC panels.

On entitlement reform for example, Congress has so far been completely unwilling to allow any entitlement reform commission to see its recommendations go into effect by default. In January 2007, Senator Dianne Feinstein (D-Calif) and Pete Domenici (R-N.M.) proposed a commission to propose reforms to Medicare and Social Security (S. 355). The contours of the looming entitlement crisis are well known – as the Baby Boom generation begins to retire, payroll taxes will not be sufficient to pay for rapidly increasing retirement and medical care benefits. The solution adopted in 1983, increasing payroll taxes and placing the surplus in a "trust fund" that will be drawn down as the boomers retire, was a temporary finesse that failed to resolve the underlying imbalance between taxes and outlays.[21]

The legislation would establish a National Commission on Entitlement Solvency, a 15 member body made up of 7 presidential appointees and 8 congressional appointees, including at least 4 members of Congress. The panel would be bipartisan, with 7 Democrats, 7 Republicans, and 1 unaffiliated appointee. The Commission would be charged with proposing policies to insure the long-term solvency of Social Security and Medicare.

Procedurally, however, the commission's proposals get little in the way of special rights. The bill requires expedited consideration and requires referral committees to report the bills to the floor in both the House and Senate. Additionally, the Commission proposal is automatically sent to the floor if the Committees do not report it, and is guaranteed floor consideration with limited debate. The final proposal is sent back to the referral committees unless it passes with 3/5 majorities.

In practice, the complicated procedural language guarantees nothing. Moreover, the supermajority requirement – established to insure that any proposal has broad consensus – will make it nearly impossible to steer any

[21] The flaw in the trust fund concept is that the balance consists entirely of obligations; there is no money in the fund. When those obligations are due, they will be funded through either new borrowing or taxes, as with any other kind of government spending. There is some debate about the reality of the trust fund, but they revolve around the question of whether a security backed by the "full faith and credit" of the United States is as good as cash. Whether or not these special obligations constitute an enforceable legal promise, the only way to fulfill that promise is through new funding.

meaningful proposal through. The requirement that both chambers cast a vote on the final proposal could put pressure on members, who might be reluctant to take a clear position on a reform. But the lack of any substantive delegated power makes this commission comparable to efforts to shift blame and find consensus. It is not a serious effort to implement a solution.

There is simply far too much controversy over what sorts of reforms are necessary. Should benefits be protected, or should cuts be considered? Should taxes be raised, and if so by how much? Should benefits be means tested? The retirement age raised? What should the transition period look like? No legislator is likely to give up decision making rights in the presence of such controversy and uncertainty about the scope of the final policy.

And this is how it should be. Automatic delegation comes at the cost of accountability, which as a policy value is at least as important as rationality and efficiency. Delegating authority to an independent body, or governing via an automatic rule, is often a "blame avoidance" mechanism designed to obfuscate the ultimate responsibility and make it difficult for voters to connect cause and effect. As we have seen with BRAC, sometimes this works, at least in the sense of producing a generally preferred but politically difficult outcome that cannot be traced back to the actions of any legislator or group of legislators. But delegation, by itself, does not resolve underlying disagreement and controversies, and the electorate ought to have enough information to assign blame or credit. Ultimately, BRAC arose from an unusual set of circumstances, and it should replicated with great caution.

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